

A BILL FOR AN ORDINANCE

TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO REGULATION OF CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The Council finds that the ordinance currently codified at Section 21-4.110-1, Revised Ordinances of Honolulu 1990, was enacted to allow preexisting transient vacation units (TVUs) that were operating in certain residential- and apartment-zoned areas to continue to operate, provided that they obtained nonconforming use certificates and met certain other conditions. The Council further finds that since the ordinance was enacted, some TVUs have been operating illegally in residential- and apartment-zoned areas without the required nonconforming use certificates. Further, the Council finds that the neighbors of some TVUs have complained to the City about noise, illegal parking and other problems associated with such establishments. The purpose of this ordinance is to require that advertisements for TVUs include certain information that would facilitate the City's ability to locate illegal TVUs and to enforce the prohibition against their operation in residential and certain other areas.

SECTION 2. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates and advertisements for transient vacation units.

- (a) The purpose of this section is to treat certain transient vacation units which have been in operation since prior to October 22, 1986 as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section and subject to compliance with the requirements in this section and Section 21-4.110-3.
- (b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner,



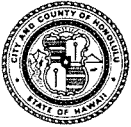
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operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.

- (c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
 - (1) between September 1, 2000 and October 15, 2000; then
 - (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (e) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.



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- (f) The owner, operator, or proprietor of a transient vacation unit for which a nonconforming use certificate is required, and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the nonconforming use certificate number and street address, including, if applicable, any apartment or unit number, of the transient vacation unit. In the event that the owner, operator, or proprietor, or any rental agent thereof, advertises multiple units in an advertisement, the nonconforming use certificate numbers, addresses, and, if applicable, the apartment or unit numbers, of all units being advertised shall be included in the advertisement. For the purpose of this subsection, an "advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner, operator or proprietor of a transient vacation unit in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet. The existence of an advertisement for a transient vacation unit shall be prima facie evidence that the owner, operator, or proprietor of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business name, or service mark of a rental agent. For purposes of this section and Section 21-4.110-3, the term "rental agent" means any person who, lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit."

SECTION 3. Chapter 21, Article 4, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-4.110-3 to read as follows:

"Sec. 21-4.110-3 Information required in advertisement—Notice and penalty for violation."

- (a) If an advertisement does not have the information required by Section 21-4.110-1(f) and Section 21-4.110-2(f), the owner, operator, proprietor, or rental agent of the transient vacation unit being advertised shall, within seven (7) days terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven (7) days of receiving such notice, take action sufficient to cure the violation. Failure to do so shall subject the owner, operator, proprietor, or rental agent to the civil fines provided in subsection (b).
- (b) Any person violation this section shall be subject to the following civil fines:
- (1) For a first violation, an initial fine of up to \$1,000; and daily fines up to \$1,000 per day until the violation is corrected.



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- (2) For recurring violations, an initial fine not less than \$1,000 but not more than \$5,000; and daily fines not less than \$1,000 but not more than \$5,000 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same code occurs.

Nothing in this subsection shall preclude the department from seeking any other remedy against a violator of this section.

- (c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 shall apply to administrative enforcement for violations of Sections 21-4.110-1(f)."

SECTION 4. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

- (a) Time sharing and transient vacation units shall be permitted in the A-2 medium density apartment zoning district provided:

[(a)] (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

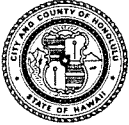
[(b)] (2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

- (b) The owner, operator, or proprietor of a transient vacation unit that does not require a nonconforming use certificate and is a permitted use in the following districts:

(1) Resort; or

(2) A-2 medium density apartment district, as provided in subsection (a);

and any rental agent thereof, shall include, in any advertisement for the unit, the street address and, if applicable, the apartment or unit number, of the transient vacation unit. For the purpose of this section, an "advertisement" means the same as is defined in Section 21-4.110-1. Administrative enforcement for violations of this subsection shall be governed by Section 21-2.150 and by the penalty provisions of Section 21-4.110-3.



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The existence of an advertisement for a transient vacation unit shall be prima facie evidence that the owner, operator, or proprietor of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business name, or service mark of a rental agent. For purposes of this section and Section 21-4.110-3, the term "rental agent" means any person who, for compensation or a valuable consideration, lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit, as a whole or partial vocation."

SECTION 5. Chapter 21, Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to read as follows:

**"TABLE 21-3
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

ZONING DISTRICTS																						
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1	

DWELLINGS AND LODGINGS

Boarding facilities							P	P	P	P	P	P				P	P				
Consulates					P/c	P/c	P	P	P	P	P	P	P	P	P	P	P				
Duplex units						P	P	P	P	P	P	P	P			P					
Dwellings, owner's or caretaker's, accessory														Ac	Ac		Ac	Ac	Ac	Ac	Ac
Dwellings for cemetery caretakers	Ac		Ac																		
Dwellings, detached, one-family				P	P	P	P	P	P	P	P	P	P			P					
Dwellings, detached, two-family						P	P	P	P	P	P	P	P			P					
Dwellings, multifamily							P	P	P	P	P	P	P			P/c	P				
Farm dwellings		P/c	P/c																		
Group living facilities		C	C	C	C	C	C	C	C	C	C	C				C	Cm				
Guest houses (R-20 only)					Ac																
Hotels													P				P		Cm		Cm
Roomers/Rooming				Ac	Ac	Ac															
Special needs housing for the elderly							C	C	C	C	C	C				C	C				
Time sharing								P/c					P								
Transient vacation [unit] units								P/c					[P]P/c								
Vacation cabins	Cm																				



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SECTION 6. Chapter 21, Table 9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct, Permitted Uses and Structures"), is amended to read as follows:

<p align="center">"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures</p>				
Use or Structure	Precinct			
	Apartment	Resort Mixed Use	Resort-Commercial	Public
Amusement and recreational facilities, indoor		P	P	
Amusement facilities, outdoor		C		
Antennas, receive-only	Ac	Ac	Ac	Ac
Art galleries and museums	C (Museums only)	P	P	
Automobile rental establishments (excluding repair facilities and open parking lots)		P	P	
Automobile service stations, excluding repair facilities			P	
Bars, cabarets, nightclubs, taverns ¹		P	P	
Boarding facilities	P	P	P	
Broadcasting facilities		P	P	
Business services		P	P	
Commercial parking lots and garages		P	P	
Convenience stores	P-AMX	P	P	
Dance or music schools		P	P	
Day-care facilities	C	P	P	
Dwellings, multifamily ²	P	P	P ³	
Eating establishments ¹	P-AMX	P	P	
Financial institutions	P-AMX	P	P	
Group living facilities	C	C	C	
Historic structures, use of	C	Cm	Cm	Cm
Home occupations	Ac	Ac	Ac	
Hotels		P		
Joint development	Cm	Cm	Cm	
Joint use of parking	Cm	Cm	Cm	
Laboratories, medical		P	P	



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Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures				
Use or Structure	Precinct			
	Apartment	Resort Mixed Use	Resort-Commercial	Public
Marina accessories		P	P	
Medical clinics	P-AMX	P	P	
Meeting facilities	C	P	P	
Neighborhood grocery stores	Cm	N/A	N/A	
Offices		P	P	
Off-site parking facilities	Cm	Cm	Cm	
Personal services	P-AMX	P	P	
Photographic processing		P	P	
Photographic studios		P	P	
Public uses and structures	P	P	P	P
Real estate offices	P-AMX	P	P	
Retail establishments	P-AMX	P	P	
Schools, language		P	P	
Schools, vocational, provided they do not involve the operation of woodwork shops, machine shops or similar industrial features		P	P	
Theaters		P	P	
Time sharing		P		
Transient vacation units ⁴		P		
Travel agencies	P-AMX	P	P	
Utility installations, Type A	P9	P9	P9	P9
Utility installations, Type B	Cm	Cm	Cm	Cm

Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
P = Permitted principal use
P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), 21-9.80-7(d) or 21-9.80-8(d)
P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct

Discretionary uses:

- Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

Other:

- N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

Note: An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.

¹ Provided a solid wall 6 feet in height shall be erected and maintained on any side or rear boundary adjoining the apartment precinct.

² Provided that where these uses are integrated with other uses, pedestrian access shall be independent from the other uses, and no building floor shall be used for both dwelling and commercial purposes.

³ Multifamily dwelling units shall only be permitted between Ala Wai Boulevard and Kuamoo Avenue in the resort commercial precinct.

⁴ Advertisements for transient vacation units shall be subject to Section 21-5.640(b)."



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SECTION 7. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions") is amended by amending the definitions of "corporate retreat" and "transient vacation unit," and by adding a new definition for "interval use" to read as follows:

- a. ""Corporate retreat" means a transient vacation unit which is provided with or without [monetary] compensation by a business, company [or], corporation, or limited liability company, including a nonprofit corporation, to transient occupants, including but not limited to employees, directors, executives or shareholders of the business, company [or] corporation, or limited liability company or their families."
- b. ""Interval use" means the use of a dwelling or lodging unit for which the exclusive right of use or occupancy circulates among various owners for a contractually limited period or periods of time."
- c. ""Transient vacation unit" means a dwelling unit or lodging unit which is provided [for] with or without compensation to transient occupants for less than 30 consecutive days, other than a bed and breakfast home, hotel room or a time share unit. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees. A transient vacation unit also includes one in fractional ownership or interval use that is not a time share unit, which is occupied less than 30 consecutive days during any period when an owner is not present, or any unit occupied for less than 30 consecutive days when the fractional ownership is less than one-twelfth (1/12) share."

SECTION 8. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.



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SECTION 9. This ordinance shall take effect 90 days after its approval.

INTRODUCED BY:

Justin Marshall (br)

DATE OF INTRODUCTION:

FEB 14 2008

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

MUFI HANNEMANN, Mayor
City and County of Honolulu

(OCS/061705/ct)